



# *Town of Brookline*

## *Massachusetts*

### PLANNING BOARD

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Robert Cook  
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Sergio Modigliani  
Jonathan Simpson

### PLANNING BOARD PUBLIC HEARING ON ZONING AMENDMENTS FOR SPRING 2014 TOWN MEETING

Thursday, **April 10, 2014** at **7:00 P.M.**  
**Room 111, Brookline Town Hall,**  
**333 Washington Street**

**Board Present:** Linda Hamlin, Robert Cook, Steven Heikin, Steven Kanes, Sergio Modigliani and Jonathan Simpson

**Staff Present:** Lara Curtis Hayes and Kara Brewton

Linda Hamlin called the meeting to order.

#### **ART. 15 Amendments to the Zoning By-Law – Sections 2.07 & 5.06, “G” Definitions and Special District Regulations – changes related to the GMR-2.0 District, 1-5 Brookline Place (Selectmen’s Brookline Place Advisory Committee)**

Linda Hamlin reviewed the makeup of the Brookline Place Advisory Committee and what the committee discussed over an extended period of time. Kara Brewton, Economic Development Director, described the process the town pursued to develop the zoning amendment, detailed the existing site and zoning amendment, and presented an overview of the general development proposal.

Kara Brewton emphasized that the connection through the site to the Brookline Village T stop and to Brookline Village’s retail center was one of the main aspects the BPLAC focused on. Brewton reviewed the changes between the current proposal and the last approved proposal from 2009. Brewton reviewed the primary questions considered by the committee and how they addressed them: should a majority of parking be allowed above-ground; if parking is above-ground, what counterbalancing features should be required; how much parking should there be? Brewton reviewed Transportation Demand Management policies and best practices and monitoring. Brewton reviewed the many opinions considered by the BPLAC in developing the recommended parking maximum.

Kara Brewton said the BPLAC wanted to ensure the zoning was comprehensive and applied to the entire site as a whole.

Linda Hamlin said there has been some misunderstanding about the 20 percent overage. She emphasized that it would be by special permit and is not automatic, and there would be input by the committee and the community. Kara Brewton said a number of benefits exist under a memorandum of understanding that Children's has agreed to provide, although they only want to provide those benefits if they obtain the additional 20 percent parking special permit.

Jonathan Simpson asked if the 20 percent would be applied for first, and then the garage would be designed and constructed. Kara Brewton said the size of the garage would not change depending on the number of parking spaces – the additional 20 percent would be achieved through a likely combination of valet and other parking management practices. Steve Heikin asked for additional detail on how the 20 percent more cars would be achieved.

Robbie Burgess, Howard Stein-Hudson Associates, said his firm's parking requirement projection was higher than Nelson Nyygard, and he reviewed why they would like the 20 percent flexibility the special permit would afford.

Steve Heikin asked how the Board of Appeals could require valet service. Kara Brewton said that through a special permit process, the ZBA could attach conditions requiring specific services, including valet.

Sergio Modigliani asked if the 20 percent special permit would be applied for at the outset along with the permits for the development as a whole. Kara Brewton said yes, that is most likely. Brewton said TDM monitoring is what is most important after the building is constructed. Sergio asked if Children's was familiar with TDM due to the development in Longwood. Children's Hospital said yes, there are a number of TDM policies they have implemented for their property in Longwood. Sergio asked if the current property employs TDM for the existing garage. George Cole said no, though they have done a study on the use of the garage and detailed the monthly and transient parkers. Robbie Burgess said a very low number of people purchase monthly passes that do not also work on site. Sergio asked about overnight parking. George said 25% of the spaces would be reserved for overnight parking use.

Abbie Sweeney, Emerson St., Transportation Advisory Committee, said the 20% overage amount seems like a gift to the developer because it doesn't penalize the allowed FAR per parking space. Sweeney said the 20% more cars would not be a huge amount, except that the neighborhood already has a lot of traffic. Sweeney said we should determine what would be a real violation in the TDM plan prior to the development's construction, as well as what penalty would be assessed upon violation.

Merelice, White Place, TMM Pct. 6, said that though the project isn't perfect, it is very good. Merelice said the town deserves a great project, and we are very close to getting there. Merelice said she accepts the new high rise building and the new wing to 1 Brookline Place, but she reluctantly accepts that there is no possibility for underground parking due to the contaminated groundwater and the expense. She thinks an above-ground garage is a huge concession from the town, and we're not getting enough in return for it. Merelice said this is a cramped site and

neighborhood, and this will have a large impact on Village Way. Merelice said the current garage is now used mainly by monthly parkers; the garage should serve primarily the needs of patients. Merelice said a new garage should reflect the existing available transportation alternatives, and the 20% overage is a mockery of the 683 maximum. Merelice said the applicant will apply for it at the start. Merelice said there should be a time limit to that 20% overage so that the developer has to prove the need for the additional parking at some later time, post construction. Merelice expressed concern about the safety of the many kids living in Village Way and about the high rates of asthma among urban children. Merelice said the large trees that would be removed will exacerbate the air pollution impacts from the development. Merelice said she doesn't think the zoning helps children.

Ken Lewis, BPLAC, EDAB, TMM Pct. 11, said he is in favor of Article 15. Lewis said this is a unique opportunity for the town, with a 3.6-acre site directly next to a T station, in single ownership and with resources. The project has to be large enough to attract tenants and capital, and they all have to sign off on it. Parking must be sufficient to satisfy them as well. Lewis said Article 16 is not a real option and would stop the project in its tracks. Lewis said the financial implications for this project are significant and long term. Lewis encouraged the Planning Board to join EDAB and BPLAC in supporting Article 15.

Jane Gilman, TMM Pct. 3, said zoning reflects the town's cultural values; the issue here is not the size of the garage, it's the number of cars that come into Brookline. Jane Gilman said if the ZBA wants to preserve a culture of cars, they will be generous with the developer; otherwise, they will work to reduce the parking and therefore reduce the emissions. Gilman said the assumptions on parking being reviewed tonight are based on a preliminary report, not the final report from Nelson Nygaard. The final report recommended taking into consideration the on-street parking in the neighborhood, which could reduce the size of the garage. Gilman said she doesn't like the discussion regarding attracting lenders, as it makes it seem like the town is for sale, and developers always ask for more parking than they need. Gilman said the 20% overage is a gimmick, and she would rather have the developer come back to the ZBA after a period of time to prove that the development doesn't have enough parking. Gilman also said she would like to know what the town is going to do for TDM monitoring.

Al Raine, EDAB, Brookline Village resident, Selectmen's Committee on Parking, said the parking outcome in Article 15 is outstanding, and the proposed parking ratio is at the low range of what is typically done. Raine said this project has continually reduced the number of parking spaces each time it has come back to the town, and there is real value in setting a maximum as a precedent in the zoning. Raine said this is a terrific outcome, transit-oriented development (TOD) is a mix of uses and environments, and this project takes all of that into consideration. Raine urged the Planning Board to support Article 15.

Alan Christ, Kent St., architect, candidate for TMM Pct. 4, said he supports Article 15, as it will provide much needed density and pedestrian activity. Christ said this project will connect the site much better with Brookline Village. Christ said the town has made a good faith effort to reduce the parking as much as possible. Christ said this project will provide sufficient tax revenue to the town, which is critical considering the town's current financial situation.

Tommy Vitolo, TMM Pct. 1, said he likes the maximum, that the garage counts toward FAR, and he hopes those features continue to be applied in the zoning going forward. Vitolo said he doesn't think the 623 parking spaces is the issue; it's the 820 number that includes the 20% overage. Vitolo said that this number brings the town right back to what Children's asked for in the first place. Vitolo said neither the town nor Children's knows how the parking garage is going to be used going forward. Vitolo asked how the cars will be parked, by tandem, by parallel, etc., if and when Children's gets the special permit. Linda Hamlin said conditions can be attached to a special permit. Jonathan Simpson said the 20% special permit is way more of a given than usual, as Children's has said they won't provide certain amenities if they don't get the special permit.

George Cole, representing Children's Hospital, said Children's number was 832 spaces, which came out of a long and productive discussion with the BPLAC. Children's said the agreement is a smaller garage of 683 spaces, likely with a valet system, which is not an ideal solution for Children's. George said they need the flexibility to be able to offer spaces for interested tenants, if needed. George said they also do not want to burden the roads and on-street parking, so they need a safety valve in order to make the project work.

Tommy Vitolo asked if stackers could be placed on the top floor and whether that would count toward the height limit. Linda said that might not be feasible, but yes, that would count toward the height limit.

Clint Richmond, TMM Pct. 6, said he thinks there is already overflow parking happening in the neighborhood, and we need to consider the possible impacts on cruising in the neighborhood. Richmond said there should be offsets to the 800+ cars, and he would like more improvements on site, i.e. carbon offsets such as renewable energy, green walls, bike cages, etc. Richmond said such commitments should be provided up front since we're being asked to agree to a parking number.

Linda Olson Pehlke, TMM Pct. 2, BPLAC, said the actual traffic impacts from constructing a large garage there are significant and should be considered going forward. Linda said we should limit parking to the bare minimum with significant TDM measures. Linda said less parking limits environmental impacts, and it allows for more development space and better amenities on site. The 20% overage feels like a bait and switch. Linda said we received the final report from the parking consultant after the BPLAC concluded, and it takes into consideration the on-street parking. Linda said metering and efficient enforcement are necessary to prevent overflow onto the street.

Phil Kenney, manager of Brook House, said if there's a discussion of a special permit now, it's pretty much a done deal. Kenney said there are 800 cars at the Brook House, and another 800 cars will be a nightmare on the highway. Kenney said he is very concerned about the 20% overage.

Linda Hamlin said the Planning Board has routinely expected an applicant to fulfill parking requirements on site. Hamlin asked how the Board would even know who was parking at on-

street meters. Hamlin said the commercial uses in Brookline Village will still need the on-street parking meters.

Sergio Modigliani asked the parking consultant from Howard Stein Hudson about the number of vehicle trips on Route 9. Robbie Burgess said around 40,000; Linda Olson Pehlke replied she thinks it's closer to 33,000.

Steve Kanes said the concern about the 20% "bonus" may be overstated; the provision is needed likely for financing purposes. Kanes said the Board doesn't just grant special permits, particularly if the neighborhood expresses concern. Kanes said the applicant will really have to justify the need for the additional 20%.

Steve Heikin asked about the FAR for the site. Heikin said the size of the new building is substantially less than previously proposed, and the proposed garage is now counted toward the FAR. Heikin said there is an elegant compromise here that makes the project viable without adding bulk to the parking garage. Heikin said this is the 3<sup>rd</sup> time we've seen a possible project at this site. Heikin said this site is at the intersection of two of the town's busiest streets, and he can't think of a better location for such a development.

Linda Hamlin ***motioned to recommend Favorable Action on Art. 15 as submitted.*** Linda applauded the BPLAC on their work, and said there is still more work to be done. Linda said the height limits, setbacks, etc., are thoughtful, and we need to start encouraging development in this town.

Bob Cook ***seconded*** the motion.

**Upon a vote, the motion to recommend Favorable Action passed unanimously (6-0).**

**ART. 16 Amendments to the Zoning By-Law – Sections 2.07 & 5.06 ("G" Definitions and Special District Regulations) – changes related to the GMR-2.0 District, 1-5 Brookline Place (Petition of Andrew Fischer)**

Tommy Vitolo, TMM Pct. 1, said he is not the petitioner, but he is here to represent petitioner Andy Fischer. Tommy said that under Town Meeting and state rules, we wouldn't be able to amend Article 15 to reduce the parking or size of the garage; Article 16 is a way to open up that conversation. The numbers selected in Article 16 were chosen to allow for compromise, not because they are the appropriate numbers. Andy Fischer wasn't sure Article 15 could get a 2/3 vote at Town Meeting, but maybe with changes, Article 16 could get people on board with the project. Tommy said this idea will not work if people suggest amendments on the floor of Town Meeting. Tommy said he doesn't expect the Board to support Article 16 as it currently exists, but he does hope for support for the development and the possibility of making changes to get a 2/3 vote at Town Meeting.

Linda Hamlin asked why the proponents didn't come to any of the BPLAC meetings before. Tommy Vitolo said he doesn't have time to go to all of the meetings. The Board discussed with

Tommy the ability to attend meetings and make changes to the zoning. Sergio Modigliani asked the applicant to explain how the changes to the zoning would happen if not through the prior negotiation process the town has participated in with the developer. Tommy said he hopes people would start talking with the developer informally. Sergio said the process suggested by this article would indicate that somehow the developer should negotiate with all of Town Meeting. The Board discussed the history of development and zoning in Brookline. Steven Heikin said bringing Article 16 to the floor will bring too many unknowns and variables to the process, when there was a separate open process that was inclusive and deliberate.

Merelice said she does see new faces and new concerns raised at each new public hearing for the development, and Article 16 is a way out to make sure the development can proceed. Merelice suggested the Board not take a position on Article 16 at this time.

Jonathan Simpson said he can appreciate what Article 16 is trying to do, but as written and presented to the Board, it is not something we should support. Steven Heikin asked if Article 15 is approved, whether Article 16 can move forward. Tommy Vittolo reviewed the process the Moderator will use to handle the two articles at Town Meeting.

Linda Hamlin ***motioned to recommend No Action on Art. 16***

Steve Heikin ***seconded*** the motion.

**Upon a vote, the motion to recommend No Action passed unanimously (6-0).**

**ART. 20 Amendment to the Zoning Map to change the zoning for 273, 277, and 281 Mason Terrace from S-7 to T-6. (Petition of Daniel Simkovitz and Elena Budrene-Kac)**

Robert Allen, 300 Washington St., representing the article's petitioners, presented the article to the Board and reviewed the proposed zoning. Allen said one of the petitioners, Dan Simkovitz, came before the Board of Appeals a few months ago to seek a variance to convert the basement to finished floor area, but he was unsuccessful. Allen said Elena Budrene-Kac has a similar family situation, and a similar home, and was interested in converting space in her attic. Allen said the three homes that are the subject of this article are much more similar to the homes on Winchester St. Allen said there are a number of letters of support for the rezoning, although there has also been some opposition to the amendment. Allen discussed the possible impacts from the rezoning. Allen said some Boards and committees have asked whether they've considered creating a new zoning district, but he is concerned that would be an instance of spot zoning, three houses with their own zoning district. Allen said this is a reasonable rezoning request.

Sergio Modigliani said the elevation difference between Winchester and the rear of the property is not 100 feet. Bob Cook said it is substantial, but likely not 100 feet. Sergio Modigliani asked staff why they wrote the report they did. Lara Curtis Hayes said the intent of the report is to call

attention to the main regulatory impact from the rezoning, which is an increase in allowed FAR and therefore the by-right possibility for expansion.

Stephanie Monroe, 269 Mason Terrace, said no one in the neighborhood really understood what the zoning impact would be from this amendment. Monroe said no one is against renovations and most have generally supported their neighbors. Monroe said zoning is here to protect neighbors, and changing the rules is dangerous. Monroe brought some of the letters from people who are opposed to the proposed rezoning, and she read from them (i.e. comments from the owner of 256 Mason Terrace). Monroe said these are giant buildings, and with special permits they could increase to 9,000 s.f. Monroe said people on Winchester are concerned about these buildings being taken down and new structures constructed in their place.

Steve Heikin asked if Monroe had any concerns about Simkin's previous basement proposal. Monroe said she didn't know about it. Simkin replied that he brought letters to each of his abutters, and each of them signed in support.

Josef DeKaw, 145 Mason Terrace, president of the Corey Hill Neighborhood Association, said he didn't receive too many responses from his neighbors when he asked them how they felt about the rezoning proposal, but about 2/3 have been opposed. DeKaw said there are some unrealistic fears about third units, but there is a real fear that these properties will get built up to a new maximum FAR, perhaps not by these owners but by future owners.

Sergio Modigliani asked whether we know why this zoning nonconformance occurred. Bobby Allen said these houses were all built in the 1920s, and the neighbors confirmed that the neighboring homes were built in the 1920s as well. Sergio said he doesn't understand the consequence of supporting the article, but he might be convinced if a further zoning analysis was performed. Linda Hamlin said she is sympathetic to the petitioners, but she does think there is a concern that buildings could be torn down. Jonathan Simpson said this Board sees applicants build to the maximum FAR all the time. Simpson said he doesn't think we need a theoretical zoning analysis to make a decision on this.

Steve Heikin said maybe the Board of Appeals could reconsider the petitioner's previous variance application, but he doesn't think he can support the "sledgehammer" approach of this article.

Linda Hamlin ***motioned to recommend No Action*** on Article 20.

Steven Kane ***seconded*** the motion.

**Upon a vote, the motion passed unanimously (6-0).**

**ART. 21 Amendments to the Zoning By-Law – Section 3.01.1, Classification of Districts, Zoning Map, and Table 5.01 (Table of Dimensional Requirements) to create a new S-4 zoning district and change several lots in the Meadowbrook area from T-5 to S-4. (Petition of Diane Gold)**

Diane Gold, petitioner, reviewed the neighborhood's characteristics and presented the amendment to the Board. Gold said most of the two-family homes in the neighborhood were built in the last 20 years, as was the cluster housing. Gold said the homes in the neighborhood were all modest single-family homes until very recently. Gold reviewed the two four-story, two-family homes that were constructed on Meadowbrook Road. Gold said she approached all of her neighbors, and many wanted new single-family zoning, while others didn't want to lose the two-family development potential for a variety of reasons. Gold reviewed the opt-in method for this rezoning, and proposed a new S-4 zoning district that would meet the needs of the neighbors. Gold said the rezoning proposal only removes the ability to have a two-family dwelling on the lot; all other dimensional requirements remain the same as the existing T-5 zoning district.

Steve Heikin asked if the 1.0 FAR would remain. Diane Gold said it would. Steve Heikin asked about the "any other structure or principal use" dimensions. Lara Curtis Hayes said that line provides the dimensional requirements for non-conforming uses; a single-family would be the only allowed use.

Sergio Modigliani asked whether the owners of the properties on Meadowbrook who are not included in the new S zone were asked but did not want to be included. Diane Gold said yes, they did not want to lose the two-family option. The Board discussed with the petitioner and neighbors the properties in detail. Linda Hamlin commended the neighbors for pursuing the new zoning.

Bob Cook asked if the petitioner had considered a neighborhood conservation district. A neighborhood resident said they considered it, but the proposed NCD on Loveland Road had failed last year and they decided to go forward with the rezoning instead.

Linda Hamlin *motioned to recommend Favorable Action on Art. 21*

Steve Kanes *seconded* the motion.

**Upon a vote, the motion to recommend Favorable Action *passed unanimously (6-0).***

**ART. 22 Amendments to the Zoning By-Law – Section 4.07, Table of Use Regulations (Use 25A) and Section 6.08, Regulations Applying to Gasoline Service Stations to allow by special permit self-service gas stations, as well as gas stations with associated convenience stores. (Planning and Community Development Department)**

Lara Curtis Hayes presented the amendment and the proposed changes for gas stations. Lara said the Board of Selectmen has suggested a wording change to allow a gas station and its associated convenience store to have different names as long as they operate as a single business.



The Board discussed the proposed zoning in detail, including questions about the convenience store operations, whether electric vehicle charging should be considered a gas station, parking requirements for the convenience store use, and the selling of products within the store.

Linda Hamlin *motioned to recommend Favorable Action on Art. 22, with the revision suggested by the Board of Selectmen.*

Jonathan Simpson *seconded* the motion.

**Upon a vote, the motion to recommend Favorable Action passed unanimously (6-0),**

**ART. 23 Amendment to the Zoning By-Law – Section 4.07, Table of Use Regulations (Use 53) to prohibit separate accessory dwellings for domestic employees and their families in single family districts. (Planning and Community Development Department)**

Linda Hamlin asked if anyone in the audience would like to discuss Article 23. No comment was offered.

Linda Hamlin *motioned to recommend Favorable Action on Art. 23.*

Sergio Modigliani *seconded* the motion.

**Upon a vote, the motion to recommend Favorable Action passed unanimously (6-0).**

**ART. 11 Amendment to the Town's By-Laws – Article 5.10 to establish a Greater Toxteth Neighborhood Conservation District (Neighborhood Conservation District Commission)**

Dick Garver, Vice Chair of the Neighborhood Conservation District Commission (NCDC), said this is the first proposal to be recommended by the NCDC under General By-law 5.10. Dick Garver presented the proposal to the Board, and described the neighborhood's characteristics in detail, including large front yard setbacks, porches, and expansive backyards. Garver said there has been extensive neighborhood discussion of development and regulatory options. Garver said a significant majority of the homeowners in the proposed district support the article. Garver said there are 3 triggers that would make a project in the proposed NCD reviewable: any addition of more than 15% in s.f.; advancing the home closer to the street; and changes to the front porch.

Ann Turner, representing the neighborhood, said the real impetus for this NCD is a by-right development on Toxteth Street that maximizes the allowed FAR and is completely out of scale with the neighborhood. Turner reviewed the discussions among neighbors to reach a consensus. Turner said the goal of the NCD is to ensure future development will take into consideration the context of the neighborhood.

The owner of 47-49 Harrison Street said he doesn't want to be in the proposed NCD. Bob Cook asked why they weren't excluded from the boundary. Dick Garver said the NCD abuts the Local Historic District and retains some cohesiveness. If you remove 47-49 Harrison Street, then there is a hole between the two districts.

Sergio Modigliani said he supports the proposal, but he is not sure why the Board is considering this warrant article since it isn't zoning. Steve Kanes said our purview is not only limited to zoning. Dennis DeWitt said the Planning Board comments on LHDs, and this is similar.

Greer Hardwicke said the NCD Rules and Regulations allow for Planning Board comment.

Sergio Modigliani said he would like to only add supportive comment, but not take a formal position.

Steven Heikin said he has looked at this pretty carefully, and there may be a missed opportunity to address the rear yard space, although it does mention the rear yards. Steven Heikin further discussed the rear yards in the neighborhood, and encouraged the NCDC to consider reviewing rear yard development. Dennis DeWitt said NCDs aren't limited to reviewing additions that are only visible from the public way, and additions that add more than 15% in square footage do trigger design review. The Board continued to discuss the proposed guidelines and reviewable projects, especially in relation to rear yards.

Steve Heikin said the definition of the front plane of the building is confusing and not clear.

Bob Cook said he has been the most hesitant to support NCDs, especially if there are individuals who do not want to be included in the district. One of his concerns is that it does not need a 2/3 vote to pass Town Meeting, like zoning. However, Cook noted that this has been one of the strongest cases yet to support the establishment of an NCD. The Board continued to discuss whether some properties should be removed from the district.

Harry Bohrs, TMM Pct. 3, said some people would prefer to not be in the district, and some people would prefer to be in a different zoning district as well. He understands the concern about the 2/3 vote for zoning versus the 51% needed for the NCD, but you have more than 2/3 support in the neighborhood for this district, which only affects this neighborhood, as opposed to zoning, which affects the whole town. Bohrs said allowing some rear yard development and some expansion allows families to reasonably expand their home. Though there is some risk of cutting off view corridors, those projects would most likely be reviewable. Dennis DeWitt continued to discuss why he would not support the exclusion of 47-49 Harrison St. from the district.

The Board continued to discuss how NCDs would operate, particularly with regard to the Planning Board and Board of Appeals process.

The Board agreed a memo should be put together incorporating their comments. Steve Kanes said while we have reservations with how this will work procedurally, we are generally supportive of the neighborhood's efforts.

**Meeting Minutes, March 20, 2014**

Linda Hamlin *motioned to approve the minutes* from March 20, 2014.

Bob Cook *seconded the motion*.

After discussion, the motion *passed unanimously (6-0)*.

Meeting adjourned.